

OFFICIAL GAZETTE

GOVERNMENT OF GOA, DAMAN AND DIU

EXTRAORDINARY

GOVERNMENT OF GOA, DAMAN AND DIU

Law and Judiciary Department

Notification

LD/2411/75

The following Ordinance which was recently promulgated by the President of India on 1st July, 1975 is hereby published for general information of public.

M. S. Borkar, Under Secretary (Law).

Panaji, 11th July, 1975.

MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 1st July, 1975
Asadha 10, 1897 (Saka)

THE CONSERVATION OF FOREIGN EXCHANGE AND PREVENTION OF SMUGGLING ACTIVITIES (AMENDMENT) ORDINANCE, 1975

No. 6 of 1975

Promulgated by the President in the twenty-sixth Year of the Republic of India.

An Ordinance to amend the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

Whereas a grave emergency exists whereby the security of India is threatened by external aggression and internal disturbance;

And Whereas Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, Therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution,

the President is pleased to promulgate the following Ordinance:—

1. Short title and commencement.—(1) This Ordinance may be called the Conservation of Foreign Short Exchange and Prevention of Smuggling Activities (Amendment) Ordinance, 1975.

(2) It shall come into force at once.

2. Act 52 of 1974 to be temporarily amended.—During the period of operation of this Ordinance, the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the principal Act), shall have effect subject to the amendments specified in sections 3, 4 and 5.

3. Insertion of new section 5A.—After section 5 of the Principal Act, the following section shall be inserted, namely:—

“5A. Grounds of detention severable.—Where a person has been detained in pursuance of an order of detention under sub-section (1) of section 3 which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds and accordingly—

(a) such order shall not be deemed to be invalid or inoperative merely because one or some of the grounds is or are—

(i) vague,

(ii) non-existent,

(iii) not relevant,

(iv) not connected or not proximately connected with such person, or

(v) invalid for any other reason whatsoever

and it is not therefore possible to hold that the Government or officer making such order would have been satisfied as provided in sub-section (1) of section 3 with reference to the remaining ground or grounds and made the order of detention;

(b) the Government or officer making the order of detention shall be deemed to have

made the order of detention under the said sub-section (1) after being satisfied as provided in that sub-section with reference to the remaining ground or grounds."

4. Amendment of section 12.—In section 12 of the principal Act, after sub-section (5), the following sub-section shall be inserted, namely:—

"(6) Notwithstanding anything contained in any other law and save as otherwise provided in this section, no person against whom a detention order made under this Act is in force shall be released whether on bail or bail bond or otherwise."

5. Insertion of new section 12A.—After section 12 of the principal Act, the following section shall be inserted, namely:—

12A. Special provisions for dealing with emergency.—(1) Notwithstanding anything contained in this Act or any rules of natural justice, the provisions of this section shall have effect during the period of operation of the Proclamation of Emergency issued under clause (1) of article 352 of the Constitution on the 3rd day of December, 1971, or the Proclamation of Emergency issued under that clause on the 25th day of June, 1975, or a period of twelve months from the 25th day of June, 1975, whichever period is the shortest.

(3) When making an order of detention under this Act against any person after the commencement of the Conservation of Foreign Exchange and Prevention of Smuggling Activities (Amendment) Ordinance, 1975, the Central Government or the State Government or, as the case may be, the officer making the order of detention shall consider whether the detention of such person under this Act is necessary for dealing effectively with the emergency in respect of which the Proclamation referred to in sub-section (1) have been issued (hereafter in this section referred to as the emergency) and if, on such consideration, the Central Government or the State Government or, as the case may be, the officer is satisfied that it is necessary to detain such person for effectively dealing with the emergency, that Government or officer may make a declaration to that effect and communicate a copy of the declaration to the person concerned:

Provided that where such declaration is made by an officer, it shall be reviewed by the appropriate Government within fifteen days from the date of making of the declaration and such

declaration shall cease to have effect unless it is confirmed by that Government, after such review, within the said period of fifteen days.

(3) The question whether the detention of any person in respect of whom a declaration has been made under sub-section (2) continues to be necessary for effectively dealing with the emergency shall be reconsidered by the appropriate Government within four months from the date of such declaration and thereafter at intervals not exceeding four months, and if, on such reconsideration, it appears to the appropriate Government that the detention of the person is no longer necessary for effectively dealing with the emergency, that Government may revoke the declaration.

(4) In making any consideration, review or reconsideration under sub-section (2) or (3), the appropriate Government or officer may, if such Government or officer considers it to be against the public interest to do otherwise, act on the basis of the information and materials in its or his possession without disclosing the facts or giving an opportunity of making a representation to the person concerned.

(5) It shall not be necessary to disclose to any person detained under a detention order to which the provisions of sub-section (2) apply, the grounds on which the order has been made during the period the declaration made in respect of such person under that sub-section is in force, and, accordingly, such period shall not be taken into account for the purpose of sub-section (3) of section 3.

(6) In the case of every person under a detention order to which the provisions of sub-section (2) apply, being a person in respect of whom a declaration has been made thereunder, the period during which such declaration is in force shall not be taken into account for the purpose of computing—

(i) the periods specified in clauses (b) and (c) of section 8;

(ii) the periods of "one year" and "five weeks" specified in sub-section (1), the period of "one year" specified in sub-section (2) (i), and the period of "six months" specified in sub-section (3), of section 9.

FAKHRUDDIN ALI AHMED,
President.

K. K. SUNDARAM,
Secy. to the Govt. of India.